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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/730,969 | 12/09/2003 | William L. Harrison | 6292.310 | 3669 |
| 28410 | 7590 | 12/31/2008 | EXAMINER | |
| BERENATO, WHITE & STAVISH, LLC 6550 ROCK SPRING DRIVE SUITE 240 BETHESDA, MD 20817 | | | | TRUONG, THANH K |
| ART UNIT | | PAPER NUMBER | | |
| 3721 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/730,969 | HARRISON ET AL. |
| | Examiner | Art Unit |
| | THANH K. TRUONG | 3721 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 October 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 and 12-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 19 and 20 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 8-10, 12-18 and 21-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This action is in response to applicant's amendment received on November 15, 2008.
2. Applicant's cancellation of claim 11 is acknowledged.
3. Claims 1-7, 11, 19 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-10, 13, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Godet (3,498,022).

Godet discloses an system comprising:

a staging device (1) – it is construed that the recitation following the phrase “a staging device” is a functional recitation and it does not provide any structural limitations in an apparatus claim and thus it does not distinguish the claimed limitation from the prior art , and Godet apparatus is fully capable of performing the recited functions. Furthermore, the plurality of groups of food item is a work piece and thus has no structural limitations or patentability;

an accumulating and storage device (5) – again, it is construed that the recitation following the phrase “an accumulating and storage device” is a functional recitation and it does not provide any structural limitations in an apparatus claim and thus it does not distinguish the claimed limitation from the prior; and

a packing device (4).

Godet further discloses:

Regarding claims 9 and 10, the plurality of groups fall by gravity into the accumulating and storage device and the packing area.

Regarding claims 13 and 14, the accumulating and storage device includes a pair of laterally reciprocating rods (14, 15), and a plurality of dividers (8, 9).

Regarding claim 16, it is construed that Godet system comprising a controller in order to synchronize the timing of all movements in the system.

6. Claims 8-10, 12-16, 21, 23-25, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Godet (3,445,986).

Godet discloses an system comprising:

a staging device including a lug chain drive (1) – it is construed that the recitation following the phrase “a staging device” is a functional recitation and it does not provide any structural limitations in an apparatus claim and thus it does not distinguish the claimed limitation from the prior art, and Godet apparatus is fully capable of performing the recited functions. Furthermore, the plurality of groups of food item is a work piece and thus has no structural limitations or patentability;

an accumulating and storage device (4); the accumulating and storage device including a plurality of dividers (5) (as in the independent claims 23-25) positioned to direct the groups and maintain the groups intact and aligned as the group fall from the staging device; and

a packing device (6) (column 3, lines 1-3).

Godet further discloses:

Regarding claims 9 and 10, the plurality of groups fall by gravity into the accumulating and storage device and the packing area.

Regarding claim 12, the staging device includes a pair of laterally reciprocating rods (3) – column 2, lines 51-57.

Regarding claims 13 and 14, the accumulating and storage device includes a pair of laterally reciprocating rods (not number – figure 1 show the rods are connected to device (33)), and a plurality of dividers (5).

Regarding claim 15, the packing device includes a receptacle having a plurality of separators dividing the receptacle into cavities shaped to receive the predetermined number of received layers of groups from the accumulating and storage device (column 3, lines 1-3).

Regarding claim 16, it is construed that Godet system comprising a controller in order to synchronize the timing of all movements in the system.

Regarding claim 28, it is construed that Godet '986 apparatus is fully capable of handling groups between the lugs spaced as recited (Fig. 1 shows free space to accommodate more than one food item in each lug spaced).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 17, 18, 22 and 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godet (3,445,986) (hereinafter Godet '986) in view of Godet (3,498,022) (hereinafter Godet '022).

As discussed above, Godet '986 discloses the claimed invention, but it does not expressly disclose a pair of rotatable tucking flaps positioned between the accumulating and storage area and the packing area as recited in claim 26.

Godet '022 discloses a pair of rotatable tucking flaps (10, 11) positioned between the accumulating and storage area (1) and the packing area (4), the tucking flaps (10, 11) provide an effective means to deposit food product into the containers below.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the system of Godet '986 by incorporating the pair of rotatable tucking flaps (10, 11) as taught by Godet '022 to provide an effective means to deposit food product into the containers below.

The modified Godet '986 by Godet '022 further discloses:

Regarding claims 17, 18 and 22, the pair of rotatable tucking flaps (10, 11) include notches shaped to provide clearance for the separators, thereby allowing the flaps to rotate below horizontal into the cavities.

Regarding claim 27, the packing device includes a receptacle having a plurality of separators dividing the receptacle into cavities shaped to receive the predetermined number of layers of the groups from the accumulating and storage device (column 3, lines 1-3).

Response to Arguments

9. Applicant's arguments filed November 15, 2008 have been fully considered but they are not persuasive.

10. In response to the Applicant's argument that Godet ('022 and '986) does not disclose "a plurality of groups", the examiner disagrees for the following reasons:

Firstly, it is construed that that a group comprises at least two items. Fig. 1 of Godet ('022 and '986) clearly shows a plurality of Groups of food items (a multiple of groups of two). Most importantly, the claim as recited does not require (structurally) that these groups of food items are to be physically separated. Therefore, Godet ('022 and '986) discloses the limitation as recited.

Applicant misinterprets the principle that claims are interpreted in the light of the specification. Although the plurality of groups of food items disposed separately are found as examples or embodiments in the specification, they were not claimed explicitly. Nor were the words that are used in the claims defined in the specification to require these limitations. A reading of the specification provides no evidence to indicate that these limitations must be imported into the claims to give meaning to disputed terms.

Constant v. Advanced Micro-Devices, Inc., 7 USPQ2d 1064.

Secondly, as discussed above, the recitations in the claims that follow the word “for” as recited in the claims are considered functional recitations, and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Finally, as discussed above in paragraphs 5-6, the “plurality of groups ... food items” is a work piece. The work piece provides no structural limitations to an apparatus claim, and thus has no patentability.

The examiner maintains that Godet ('022 and '986) discloses the claimed invention as recited, and Godet ('022 and '986) apparatus is fully capable of performing the functions as recited.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to THANH K. TRUONG whose telephone number is (571)272-4472. The examiner can normally be reached on Mon-Fri 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tkt
December 30, 2008.

/Thanh K Truong/
Primary Examiner, Art Unit 3721.